2015 IL App (3d) 130003-U

Order filed February 5, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

MICHAEL GRANE, Plaintiff-Appellant, v. METHODIST MEDICAL CENTER OF CENTRAL ILLINOIS, and JULIAN LIN, M.D., Defendants, and VONACHEN, LAWLESS, TRAGER & SLEVIN, Petitioner- Appellee.	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois. Appeal No. 3-13-0003 Circuit No. 06-L-175 The Honorable Kevin W. Lyons, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court abused its discretion in awarding law firm attorney fees based on contingency fee agreement where client terminated firm working under the fee agreement; once firm was terminated, contingency percentage was no longer

operative, and trial court was required to evaluate the reasonable value of the service rendered during the firm's period of employment based on *quantum meruit* factors.

¶ 2 Petitioner, Vonachen, Lawless, Trager & Slevin (VLTS), filed a petition for fees under the Attorneys Lien Act (Act) (770 ILCS 5/1 (West 2012)) against plaintiffs, Michael Grane, and his attorneys Katrina Taraska and Goldberg & Goldberg (Goldberg) to recover fees incurred in the representation of Grane in a medical malpractice action. The trial court held that VLTS was entitled to 30% of the attorney fees awarded to Goldberg based on a contingency fee agreement between VLTS and Goldberg. Plaintiffs appeal, arguing that the trial court abused its discretion in awarding VLTS a share of the fees under the Act. We reverse and remand for further proceedings.

¶ 3 Grane was injured in a motor vehicle accident in 2001. He was hospitalized at Methodist Medical Center of Central Illinois (Methodist) and underwent surgery. In 2002, he hired the firm of Costello & McMahon and filed a medical malpractice claim against Methodist and Julian Lin, M.D., the neurosurgeon who performed the surgery, asserting that their negligence caused or contributed to a spinal cord injury.

¶ 4 In 2005, Costello & McMahon moved to voluntarily dismiss the suit. In 2006, Grane asked Richard Gentry, a member of the VLTS firm, to review the file to see if any of the deficiencies could be remedied. Gentry, in turn, sought the assistance of Katrina Taraska, a partner at VLTS who had experience in the area of medical malpractice. Taraska took the case and was able to obtain a section 2-622 report and certificate of merit and refile the action within days of the deadline for refiling the complaint. Taraska continued to work on the case for the next two years. Between the refiling of the case on May 23, 2006, and July 2008, she billed approximately 1200 hours of work.

¶ 5 On June 24, 2008, Taraska, while still working as a partner at VLTS, retained the Chicago firm of Goldberg and Goldberg (Goldberg) to act as co-counsel in the case. The agreement between the parties was that Taraska would serve as co-counsel, assisting and performing work on all aspects of the case, including participation in all depositions and appearances at hearings in Peoria. The contingency fee agreement named Taraska as the referring attorney and Grane as the client:

> "CLIENT fully understands, agrees and consents to the fact that Katrina Taraska, the referring attorney in this matter, will receive attorney's fees as follows: 30% (thirty percent) of any fees collected by Goldberg & Goldberg.
>
> If a Court of law finds that Goldberg & Goldberg has performed 'extraordinary services' under the provisions of the applicable statute and awards attorney's fees of 1/3 of the total recovered, the referring attorney's share of that fee will be 30% and also assumes [sic] responsibility for the performance of the legal services to be rendered to the CLIENT."

The contract was signed by Barry Goldberg, on behalf of Goldberg, and by Taraska, on behalf of VLTS.

¶ 6 On June 29, 2009, Taraska gave written and oral notice to VLTS that she was withdrawing from the partnership. On that same day, she sent a letter to Grane, advising him that she was leaving VLTS and would be joining Goldberg on August 15, 2009. Taraska attached communication instructions with corresponding addresses to the letter. The instructions provided that "at all times from June 30, 2009, to August 15, 2009," she could be reached at VLTS and that after August 15, 2009, she could be contacted at Goldberg. Grane signed a form, dated June 30, 2009, stating that he wished to have Taraska represent him "after she joins the

firm of Goldberg & Goldberg on August 1, 2009." The form directed VLTS to transfer his files to Taraska's residence. On July 31, 2009, VLTS served notices of its lien for attorney fees on the defendants in Grane's lawsuit.

¶ 7 Taraska formally joined Goldberg on August 15, 2009. Two days later, Grane and Goldberg entered into a new fee contract. The new contract stated:

> "CLIENT fully understands, agrees and consents to the fact that Katrina Taraska (Wilson), the referring attorney in this matter, has, and will continue to, act as co-counsel during the course of her representation of me and will receive attorney's fees in the amount of 30% (thirty percent) of any fees received by GOLDBERG & GOLDBERG.
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> * * *
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> I understand that Katrina Taraska, formerly of Vonachen, Lawless, Trager & Slevin, now currently with GOLDBERG & GOLDBERG, shall continue to act as one of my attorneys in this matter, and will continue to participate in the active prosecution of my claim. *** It is further my decision that Vonachen, Lawless, Trager & Slevin shall not act as my attorney for any purpose and shall take no further action on my behalf related to this claim.
>
> I understand that any previous representation agreements executed between me and my current or former attorneys are no longer in effect and/or operative but that VONACHEN, LAWLESS, TRAGER & SLEVIN" (hereinafter "VLTS"), has declared the right to assert a claim for quantum meruit for the reasonable value of those services rendered up to the date when my current attorney, Katrina Taraska, separated from her former law firm, VLTS, on August 14, 2009. *** Any claim

for quantum meruit shall be decided by a court of law unless otherwise agreed to between the undersigned parties and VLTS at a later date.

I further have been advised that any claim for quantum meruit by VLTS shall only occur upon recovery on my behalf either by settlement or award upon trial.

* * *

Moreover, nothing within this paragraph precludes VLTS from pursuing a claim for quantum meruit and the recovery of any expenses advanced on behalf of the client at the time of settlement or verdict in favor of the client."

¶ 8 Taraska continued to work on Grane's case as the lead attorney while at Goldberg. On July 27, 2012, three days before trial, Grane settled the case with the hospital for $7,500,000. The court later approved a settlement fee of $2,500,000, as an enhanced fee for the services Goldberg provided.

¶ 9 VLTS filed a petition to enforce attorney's lien on August 24, 2012. In the petition, VLTS claimed that Taraska billed 1,210.50 hours through July 2008 and that the firm had advanced costs in the amount of $27,712.08. It also alleged that Taraska, while still employed by VLTS, spent a significant amount of time on the case after July of 2008, which she had not recorded, and sought fees for that time based on *quantum meruit*. Grane petitioned to adjudicate the lien on September 12. In response, VLTS filed a supplemental petition, seeking 30% of the total fee awarded to Goldberg.

¶ 10 A preliminary hearing was held on September 24, 2012. At the hearing, counsel for Goldberg cited several cases and stated that "it's not really a contract anymore, but based on quantum meruit." At the conclusion of the hearing, the trial court permitted VTLS to file

additional documents, including Taraska's time records, emails and computer files related to the Grane case while she was a partner at VLTS.

¶ 11 VTLS filed a supplemental pleading. Attached to the pleading was an exhibit estimating the time Taraska expended on the case while she was a partner at VLTS. The exhibit listed 1,195.39 hours through July 9, 2008, plus 708.79 additional hours from July 2008 to August of 2009, that were "uncoded" due to the 2008 contingency agreement. The "uncoded" hours represented the hours Taraska did not record after July 2008 and were calculated using a monthly average of the time she billed in the case in 2007. At a value of $175 per hour, the exhibit calculated fees of $332,069.44, plus costs of $27,712.08, for a total bill of $359,781.52.

¶ 12 Following consideration of the parties' pleadings, exhibits and affidavits, the trial court entered judgment in favor of VLTS. In a written order, the court stated that the "agreement executed on June 24, 2008, is mostly dispositive of the issues herein. The efforts made by [Grane] to 'discharge' VLTS after Taraska left VLTS do not extinguish VLTS's legitimate claim for it's [sic] share of the fee ultimately enjoyed by Goldberg via Taraska." The court concluded that "a 30% share of attorney fees for VLTS secured herein shall be based on the [unenhanced] statutory allowance ($1,962,500), of which 30% is $588,750."

¶ 13 A. Attorneys Lien Act

¶ 14 Plaintiffs first argue that the trial court abused its discretion in awarding attorney fees to VLTS because VLTS failed to comply with the Act.

¶ 15 To collect the claimed fees under the Act, an attorney must file a petition with a court of competent jurisdiction to "adjudicate the rights of the parties and enforce the lien." 770 ILCS 5/1 (West 2012). Strict compliance with the Act is required. *People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 95 (2001). To enforce the lien, the Act states that the attorney must have been hired

by the client to assert a claim and must then perfect the lien. 770 ILCS 5/1 (West 2012). To perfect the lien, the attorney "shall serve notice in writing, which service may be made by registered or certified mail, upon the party against whom their clients may have such suits, claims or causes of action, claiming such lien and stating therein the interest they have in such suits, claims, demands or causes of action." 770 ILCS 5/1 (West 2012). The lien attaches from and after the time of service of notice required by the statute. *Rhoades v. Norfolk & Western Railway Co.*, 78 Ill. 2d 217, 227 (1979). Because the lien attaches to the cause of action the attorney is hired to pursue, the lien must be perfected during the pendency of the attorney-client relationship. *Id.*

¶ 16 Plaintiffs claim that in order for VLTS to recover the fees requested in its petition for attorney's lien, VLTS had the burden of first proving that its lien was perfected in compliance with the Act. Plaintiffs argue that VLTS failed to meet that burden because the firm failed to serve notice on defendants during the pendency of its attorney-client relationship with Grane.

¶ 17 To properly perfect its lien, VLTS was required to serve notice of its lien on the affected parties during the pendency of its relationship with Grane. See 770 ILCS 5/1 (West 2012); *Rhoades*, 78 Ill. 2d at 227. Documents in the record indicate that the effective date of the commencement of Taraska's practice at Goldberg was August 15, 2009. Taraska's letter to Grane indicated that the effective date would be August 15, 2009. The letter states that Taraska was going to continue her practice in Peoria and could be contacted at VLTS until August 15, 2009. It further provided that after August 15, 2009, she could be contacted at Goldberg. The form letter sent to VLTS and signed by Grane states that Grane wished to have Taraska represent him after she joined the Goldberg firm on August 1, 2009. In addition, the second Goldberg contingency agreement, dated August 17, 2009, expressly states that Taraska left VLTS "on

August 14, 2009." Nothing in the record supports plaintiffs' contention that Taraska ceased working at VLTS before August 1, 2009. Thus, the notices of attorney's lien served on defendants on July 31, 2009, were served during the pendency of the attorney-client relationship in compliance with the Act.

¶ 18 B. *Quantum Meruit*

¶ 19 In the alternative, plaintiffs claim that the court abused its discretion in awarding a *quantum meruit* fee for VLTS's services based on the June 24, 2008, contingency fee agreement.

¶ 20 When a client terminates an attorney working under a contingency fee agreement, the contract ceases to exist and the contingency percentage is no longer operative. *Rhoades*, 78 Ill. 2d at 229; *Will v. Northwestern University*, 378 Ill. App. 3d 280, 303-04 (2007). At that point, the former client is liable for the reasonable value of the services received during the attorney's period of employment. See *Rhoades*, 78 Ill. 2d at 229-30 (attorney discharged without cause is not entitled to recover contract fee but is limited to reasonable fees for services rendered); *Thompson v. Hiter*, 356 Ill. App. 3d 574 (2005).

¶ 21 In *Rhoades*, a client entered into a contingency fee agreement with a law firm and, the next day, discharged the firm. After the former client agreed to settle the case, the discharged firm filed a petition to recover the full contingency fee under the Attorney Lien Act. Our supreme court held that an attorney who enters into a contingency fee contract with a client and is discharged without cause "is entitled to be paid on a *quantum meruit* basis a reasonable fee for services rendered before discharge." *Rhoades*, 78 Ill. 2d at 230.

¶ 22 To determine the reasonable value of an attorney's services, courts should consider (1) the skill and standing of the attorney employed, (2) the nature of the case and the difficulty of the questions at issue, (3) the amount and importance of the subject matter, (4) the degree of

responsibility involved in the management of the case, (5) the time and labor required, (6) the usual and customary fee in the community, and (7) the benefit resulting to the client. *In re Estate of Callahan*, 144 Ill. 2d 32, 44 (1991) (citing *Mireles v. Indiana Harbor Belt R.R. Corp.*, 154 Ill. App. 3d 547, 551 (1987)). A trial court has broad discretion in awarding attorney fees, and its decision will not be reversed on appeal unless the court abused its discretion. *Estate of Callahan*, 144 Ill. 2d at 43-44.

¶ 23 Here, Grane entered into a contingency fee agreement with VLTS and Goldberg stating that Taraska, a partner at VLTS, would receive 30% of any fees collected by Goldberg. Grane subsequently discharged VLTS. At that point, the agreement ceased to exist, and VLTS was no longer entitled to recover under the contract. Thus, when VLTS filed its petition seeking fees, Grane was liable for the reasonable value of the services received during VLTS's employment on a *quantum meruit* basis. The trial court, however, relied on the contingency fee agreement, finding it to be dispositive, and awarded VLTS attorney fees based on the fee sharing percentage provided in the agreement. Since the agreement no longer existed, the trial court was required, instead, to consider the *quantum meruit* factors to determine the reasonable value of the services VLTS provided.

¶ 24 Because the court did not analyze the reasonable value of services using the appropriate legal criteria, this case must be reversed and remanded for further proceedings. See *Robinson v. Ryan*, 372 Ill. App. 3d 167, 173 (2007) (trial court abuses its discretion in section 2-1401 proceeding where it fails to apply the proper legal criteria); see also *Sidwell v. Sidwell*, 75 Ill. App. 2d 133, 142 (1966) (reversing a discretionary ruling where court misapprehended the controlling rule of law); *Dallas v. Granite City Steel Co.*, 64 Ill. App. 2d 409, 420 (1965) (indicating a discretionary ruling should be reversed where there has been an abuse of discretion

or the court manifests a misapprehension of the law). On remand, the trial court is instructed to apply the *quantum meruit* factors listed in *Estate of Callahan* to VLTS's petition for attorney fees. We express no opinion regarding whether the attorney fee award should remain the same, be decreased or be increased by application of the appropriate factors.

¶ 25 CONCLUSION

¶ 26 The judgment of the circuit court of Peoria County is reversed, and the cause is remanded for further proceedings.

¶ 27 Reversed and remanded.